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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2006

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THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Civil Revision Petition (NPD) No.54 of 2006
and civil miscellaneous petition No.431 of 2006

J.B. Ubaidullah .... Petitioner/Petitioner

Vs.

1. Adhilakshmi
2. Gowri
3. Durai
4. Vijayakumar
5. Rajakumar
6. Corporation of Chennai,
   Rep.by its Commissioner,
   Rippon Buildings,
   Park Town,
   Chennai - 3

7. Chennai Metropolitan,
   Development Authority,
   Rep.by its Secretary,
   Thalamuthu Natarajan Maligai,
   No.8, Gandhi Irwin Rod, Egmore,
   Chennai - 8. ... Respondents/Respondents

PRAYER: This Civil Revision Petition is filed against the fair and decretal order, dated 12.12.2005, passed in E.A.No.5087 of 2005 in E.P.No.2005 of 2005 in O.S.No.5681 of 1991 on the file of the IX Assistant Judge,City Civil Court, Chennai.

For petitioner : Mrs.Chitra Sampath

For respondents : Mr.N.Nagusah

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O R D E R

This Civil Revision Petition has been filed against the fair and decretal order, dated 12.12.2005, passed in E.A.No.5087 of 2005 in E.P.No.2005 of 2005 in O.S.No.5681 of 1991 on the file of the IX Assistant Judge, City Civil Court, Chennai.

2. It is the case of the petitioner that one Krishnan, who is the father of respondents 1 to 5, had filed a suit against him in O.S.No.5681 of 1991 on the file of the XII Assistant Judge, City Civil Court, Chennai, for a permanent injunction restraining him from putting up unauthorised construction in suit B-Schedule property and also for a direction by mandatory injunction to respondents 6 and 7 herein , who are defendants 2 and 3 in the suit to demolish the alleged unauthorised construction put up by the petitioner in the suit B-Schedule property. The suit was contested by the petitioner by filing a detailed written statement contending that he had not put up any new construction in the suit property and that there was no unauthorised construction in the suit property as alleged by the plaintiff. However, the trial Court, on an erroneous appreciation of facts and law, decreed the suit. Against the said Judgment and decree , dated 22.06.1999, passed in O.S.No.5681 of 1991, the petitioner had preferred an appeal before the Principal Judge, City Civil Court, Chennai, with a petition to condone the delay in filling the appeal. The delay was condoned as per the order of this Court, dated 05.04.2005 in C.R.P.No.1851 of 2001. The appeal preferred by the petitioner is yet to be numbered.

3. Respondents 1 to 5 herein are the legal heirs of the deceased plaintiff Krishnan who died on 12.03.2001, after the disposal of the suit. Respondents 1 to 5 filed an execution petition in E.P.No.2005 of 2005 before the IX Assistant Judge, City Civil Court, Chennai, for executing the decree of mandatory injunction for demolition of the suit property. The Execution Petition was filed against defendants 2 and 3, who are respondents 6 and 7 in this Civil Revision Petition. The respondents 1 to 5 were trying to execute the decree without notice. On coming to know about the Execution Petition, the petitioner had immediately filed an application in E.A.No.5087 of 2005 in E.P.No.2005 of 2005 to implead him as a necessary party in the said Execution Petition.

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4. The petitioner states that in the impleading petition, he had raised several contentions to substantiate that he is a necessary party in the Execution petition, since the execution of the decree passed in O.S.No.5681 of 1991 involves his right, title and interest in suit B-Schedule property and that the decree granted in O.S.No.5681 of 1991 is beyond the relief sought for in the suit. The petitioner further states that the decree as it stands today is unexecutable as no portion of the property is identified for execution.

5. Learned counsel appearing for the petitioner further submits that there is no finding recorded by learned Trial Judge so as to show in which portion of the property was the unauthorised construction put up. Defendants 2 and 3 had remained exparte in the suit and had not produced any records to show that the building in suit B-Schedule property is unauthorised. Unless and until it is shown that the building in suit B-Schedule property is put up in violation of the Building Rules and Regulations, defendants 2 and 3 cannot initiate any action against the petitioner.

6. It is further contended by the learned counsel for the petitioner that Order 21 Rule 22 of Civil Procedure Code and the principle underlying the mandatory provision is that the interested party, which would be affected by the execution of the decree, should be sufficiently represented and given an opportunity to show cause against the execution. Based on the principle, that the executing Court has always got jurisdiction over the subject matter, since it is executing its own decree, it also has jurisdiction over the parties concerned and this is possible only when the proper parties are given an opportunity to appear before it. Failure to provide such an opportunity would operate as an obstacle in the way of its jurisdiction as though it has no jurisdiction over the subject matter itself. This view, according to this court, seems to be the right view.

7. On the above noted facts, the petitioner further claims that he is a necessary party in the execution petition and the learned executing court ought not to have dismissed the impleading petition. Against the dismissal of the impleading petition, the present civil revision petition has been filed.

8. While denying the averments made by the petitioner, the learned counsel for the respondents states that the order passed by the IX Assistant Judge, City Civil Court, Chennai, on 12.12.2005, in E.A.No.5087 of 2005 is valid in law and not liable to be set aside by this court. Even though he has not

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filed a written counter, he states that the civil revision petition itself may not be maintainable in view of the facts and the circumstances of the case.

9. Analysing the rival contention and on a perusal of the records filed in support of the civil revision petition and in view of the facts and circumstances of the case, this court is of the considered view that the order, dated 12.12.2005, passed by the IX Assistant City Civil Judge, Chennai, in E.A.No.5087 of 2005, is liable to be set aside and consequently, the learned IX Assistant Judge, City Civil Court, Chennai, is directed to hear E.P.No.2005 of 2005, in OS.No.5681 of 1991, in accordance with law and on merits, affording sufficient opportunity to the parties concerned, including the petitioner in the present civil revision petition, and dispose of the same within a period of 8 weeks from the date of receipt of a copy of this order.

With the above directions, this civil revision petition is ordered accordingly. No costs. Consequently, connected civil miscellaneous petition is closed.

ssm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The IX Assistant Judge,
City Civil Court, Chennai.

Copy to:-

The Registrar, City Civil Court, Chennai.

+ 1 cc to Mr.N. Nagusah, Advocate SR No.13918.

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